

Docket No.: BYG-101
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Yigal Pinto

Application No.: 10/575,745

Confirmation No.: 2559

Filed: April 9, 2007

Art Unit: 1641

For: Method for Identifying a Subject at Risk of
Developing Heart Failure by Determining the
Level of Galectin-3 or Thrombospondin-2

Examiner: G. W. Counts

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 35 U.S.C. § 154(b) AND 37 C.F.R. § 1.705(b)

Sir:

This is a request for reconsideration of the patent term adjustment indicated in the Notice of Allowance of October 1, 2010, for the above-referenced patent application.

In accordance with 37 C.F.R. § 1.705(b)(1), please charge the fee set forth in 37 C.F.R. § 1.18(e) to our credit card. Please charge any deficiency and credit any overpayment to Deposit Account No. 07-1700, under Order No. BYG-101.

Applicant provides the following statement of facts in accordance with 37 C.F.R. § 1.705(b)(2):

37 C.F.R. § 1.705(b)(2)(i)

1. Applicant submits that the correct patent term adjustment under 35 U.S.C. § 154(b), if the patent issues on the Tuesday that is before the date that is 28 weeks after the mailing date of the Notice of Allowance, will be 836 days. The basis for the adjustment is as follows:

Under 37 C.F.R. § 1.702(a)(1), the USPTO failed to mail at least one of a notification under 35 U.S.C. § 132 or a notice of allowance under 35 U.S.C. § 151 before the expiration of fourteen months after the date on which the application was filed.

Under 37 C.F.R. § 1.702(b), the USPTO failed to issue a patent within three years of the actual filing date of the application.

37 C.F.R. § 1.705(b)(2)(ii), 1.703(a), and 1.703(b)

2. The relevant dates under 37 C.F.R. § 1.703(a)(1) specifying the period of adjustment under 37 C.F.R. § 1.702(a)(1) and the relevant dates under 37 C.F.R. § 1.703(b) specifying the period of adjustment under 37 C.F.R. § 1.702(b) are as follows:

A. Adjustment under 37 C.F.R. § 1.702(a)(1)

i. Date on which requirements of 35 U.S.C. 371 were fulfilled
for this application: April 9, 2007

ii. Day after the date that is fourteen months after the date on
which the requirements of 35 USC 371 were fulfilled
for this application: June 10, 2008

iii. Date of mailing of first action under 35 U.S.C. § 132: July 9, 2009

The number of days in the period beginning on June 10, 2008,
and ending on July 9, 2009, is 395 days.

B. Adjustment under 37 C.F.R. § 1.702(b)

i. Date on which the national stage commenced under
35 U.S.C. 371(b): April 10, 2006

ii. Day after the date that is three years after the date

on which the national stage commenced under
35 U.S.C. 371(b): April 11, 2009

iii. Mailing date of the Notice of Allowance: October 1, 2010

iv. Projected patent issue date which is the Tuesday
before the date that is 28 weeks after the mailing date
of the Notice of Allowance: April 12, 2011

The number of days in the period beginning on April 11,
2009, and ending on April 12, 2011, is 732 days.

37 C.F.R. § 1.705(b)(2)(iii)

3. Applicant submits the patent to be issued is not subject to a terminal disclaimer.

37 C.F.R. § 1.705(b)(2)(iv)

4. Applicant believes that two circumstances may have constituted a "failure to engage in reasonable efforts to conclude processing or examination" of this application as set forth in 37 C.F.R. § 1.704. The circumstances are as follows:

A. Reduction of Period of Patent Term Adjustment under 37 C.F.R. § 1.704(b)

i. Date the Final Rejection was mailed to the Applicant: February 5, 2010

ii. Day after the date that is three months from the mailing
date of the Non-Final Rejection: May 6, 2010

iii. Date the reply to the Non-Final Rejection (Notice of
Appeal) was filed: August 4, 2010

The number of days in the period beginning on May 6, 2010,
and ending on August 4, 2010, is 91 days.

Applicant submits that all other replies to any notice or action by the USPTO were filed within the three-month period set forth in 37 C.F.R. § 1.704(b).

B. Reduction of Period of Patent Term Adjustment under 37 C.F.R. § 1.704(c)(8)

i. Date initial reply was submitted: October 9, 2009

ii. Date supplemental reply (Information Disclosure Statement) was filed January 27, 2010

The number of days in the period beginning on October 9, 2009, and ending on January 27, 2010, is **110 days.**

37 C.F.R. § 1.705(b)(2)(ii) and 1.703(f)

5. The period of delay attributable to the grounds specified in 37 C.F.R. § 1.702(a)(1), which begins on June 10, 2008, and ends on July 9, 2009, and the period of delay attributable to the grounds specified in 37 C.F.R. § 1.702(b), which begins on April 11, 2009, and ends on April 12, 2011, do overlap by 90 days (i.e. the period from April 11, 2009, to July 9, 2009). The adjustment as specified in 37 C.F.R. § 1.703(f) to which the patent will be entitled will be the period of 395 days calculated under 37 C.F.R. § 1.703(a)(1), plus the predicted period of 732 days calculated under 37 C.F.R. § 1.703(b), less the 201 day period calculated under 37 C.F.R. § 1.704, and less the 90 day period of overlap.

Accordingly, Applicant submits that the patent will be entitled to a patent term adjustment of $395 + 732 - 201 - 90 = \underline{\text{836}}$ days, running from the expiration date of the patent as set forth in 35 U.S.C. § 154(a)(2).

If for any reason, this Petition is found not to comply with the requirements of 37 C.F.R. § 1.705, or is otherwise found improper, please call the undersigned agent.

Respectfully submitted,

Date: October 28, 2010

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